

REMARKS

Claims 59-62 have been added to the application. Claims 1-62 remain in the application.

Claims 1, 19, 23, 26, 28, 30, 38, 43, 50, 52, 52, 55, and 57 have been rejected for anticipation by U. S. Patent No. 6,188,888 B1 ("Bartle"). That rejection is respectfully traversed for the failure of Bartle to include elements and limitations of the rejected claims.

Axiomatically, rejection of a claim for anticipation by a reference requires that the reference contain, explicitly or inherently, all of the steps (or elements) and limitations of the rejected claim. Taking claim 1 as representative, a method is set forth for transferring telephone calls from a first telephone to a second telephone in a communications network by "determining the proximity" of the first telephone to the second telephone and "initiating the transfer of calls from the first telephone to the second telephone in response to the proximity ... ". In the specification, at page 2, lines 18-23, the term "proximity" has been characterized as follows:

"Proximity" is used broadly in this summary and in the description to follow. Telephones are "proximate" when they are near or adjacent to each other. Nearness may mean a measurement of distance between a moving telephone and a fixed one, or it may entail measurement of distance between two moving telephones. The term proximity can also signify the intersection of areas or volumes that contain the telephones."

Accordingly, in claim 1 a determination is made as to how close two telephones are to each other, and calls are transferred from the first to the second telephone in response to the determination of closeness.

Claim 30 is similar to claim 1 in setting forth a system with first and second telephones and "a call transfer mechanism for transferring telephone calls from the first telephone to the second telephone in response to proximity of the first telephone to the second telephone."

In Bartle, an automatic call forwarding feature is described at col. 5, lines 7-41 in which one of a plurality of forwarding numbers may be chosen, the forwarding being done automatically "when a user places the telephone 103 on a charging unit 150." (Bartle, col. 5, lines 18, 19). Stated alternatively, call forwarding according to Bartle is initiated upon the condition that a telephone is present in a charging unit. This condition is indicated either by a user-operated switch 252 (Fig. 4, col. 6, lines 27-54), or by electrical continuity between contacts 282 (Figs. 6A-6C, col. 7, lines 13-27). A charging unit is not a telephone. Accordingly, Bartle does not explicitly teach, disclose, or illustrate the transfer of calls from one telephone to another conditioned upon proximity of the telephones. If the condition of "proximity of a first telephone to a second telephone" is considered to be inherent in Bartle, the applicant respectfully requests the introduction of extrinsic evidence clearly showing that the omitted material is necessarily present in Bartle and that it would be so recognized by persons of

ordinary skill. In this regard, see *In re Robertson*, 49 USPQ2d 1949 (Fed. Cir. 1999). Alternatively, the applicant respectfully requests withdrawal of this rejection.

Claims 2, 3, 34, and 36 have been rejected for obviousness over Bartle in combination with U. S. Patent No. 6,144,318 ("Hayashin"). That rejection is traversed for the failure of the combination to include or suggest the transfer of calls from a first to a second telephone "in response to the proximity" of the telephones. This condition is not taught in Bartle for the reasons given above in traversal of the rejection for anticipation. Hayashin does not provide the omitted subject matter. In addition, Bartle appears to disfavor, and therefore to teach away from, the transfer of calls on the condition that a telephone is "within range of ... special hardware". See Bartle at col. 1, lines 38-49. The suggestion of this passage is that range finding between a telephone and "special hardware" is costly and range-limited. Accordingly, the applicant respectfully requests withdrawal of this rejection.

In view of these remarks, it is submitted that the claims of this application are patentably distinct from the references of record, early notice of which is earnestly requested.

A check for \$324.00 is enclosed for the fee to add claims (4 extra total claims, 3 extra independent claims). The Commissioner is hereby authorized to charge any additional fees or credit any overpayment that may be associated with this communication to Deposit Account No. 50/2258. A duplicate copy of this sheet is enclosed.

Respectfully submitted



TERRANCE A. MEADOR
Reg. No. 30, 298

Date: 22 July 2002

GRAY CARY WARE & FREIDENRICH
4365 Executive Drive, Suite 1100
San Diego, CA 92121-2133

Telephone: (858) 638-6747 Fax: (858) 638-6727